

## **CITY BOARD OF ZONING APPEAL #05014**

**DATE SCHEDULED FOR PUBLIC HEARING:**

**October 28, 2005**

**LOCATION:** Generally located southwest of the intersection of Antelope Creek Road and Antelope Circle.

**ADDRESS:** 2601 Antelope Circle

**LEGAL DESCRIPTION:** Lot 1, Block 2, Prairie Valley Addition

**EXISTING LAND USE AND ZONING:** Single-family dwelling R-2 Residential

### **SURROUNDING LAND USE AND ZONING:**

North:	Park	P
South:	Residential	R-2 Residential
East:	Residential	R-2 Residential
West:	Residential	R-2 Residential

### **TYPE(S) OF APPEAL(S):**

1. THIS APPEAL IS DIRECTED TO THE BOARD RELATIVE TO A VARIANCE.  
  
A. Section 27.13.080(a), L.M.C. requires a rear yard setback of 21.72'. A variance of the rear yard setback from 21.72' to 13' is requested.
2. THIS APPEAL IS DIRECTED TO THE BOARD RELATIVE TO AN EXCEPTION.  
  
A. Applicant is requesting an exception to permit the reconstruction of a nonconforming building.

### **STAFF FINDINGS:**

1. This request consists of two appeals. The first is for a variance to the required rear setback from 21.72' to 13'. The second seeks an exception to permit the reconstruction of a nonconforming building. The goal of both requests is to allow an addition onto the rear of the existing home.
2. The required setbacks for this lot in the R-2 district are: 25' front; 5' side, and 21.72' rear. Building permits for the home and garage were approved on April 15, 1959. A second building permit was approved on October 11, 1971 for an open, 20' x 12' redwood deck attached to the rear of the house.
3. The lot is a corner lot, rectangular in shape, and typical of the lots in the area. There is nothing irregular or unusual about it. Because it is a corner lot, front yards are required along both Antelope Creek Road and Antelope Circle. In the case of corner lots with two front yards, only one side yard is required. The remaining yard is designated as the rear yard. The yards are determined at the

time of building permit by the orientation of the house on the lot. In this case, the south yard was designated as the side yard, and the west yard was designated as the rear yard at the time the house was built.

4. The approved deck was located in the rear yard per LMC Section 27.71.110 which allows a deck to project into a required rear yard provided it is open and uncovered, that it projects no more than 3' above or below the ground, and that it is at least 2' from the adjacent side lot line. All improvements complied with the applicable setback requirements at the time of building permits.
5. In the attached letter the applicant requests that the rear yard be considered the side yard for the purpose of determining setbacks. This would allow a 5' setback instead of the required 21.72'. The determination of yards is not disputed, and they are clearly defined in Title 27 (Zoning Ordinance). This portion of the request conflicts with the application form which requests a variance to the rear yard setback from 21.72' to 13'. A variance to 13' appears to be the minimum adjustment necessary to allow the applicant to construct the addition.
6. The applicant is requesting an exception to allow the reconstruction of a nonconforming structure. LMC 27.03.450 (Nonconforming Use) states "Nonconforming use shall mean the use of any dwelling, building, structure, lot, land, or premises, or part thereof, which was existing and lawful immediately prior to the effective date of this title and which does not conform with the provisions of this title and any amendments thereto." LMC 27.03.460 (Nonstandard Use) states "Nonstandard use shall mean the category of nonconformance consisting of lots occupied by buildings or structures or uses which existed immediately prior to the effective date of this title or which become nonstandard through a change in the zoning ordinance or district boundaries that fail to comply with any of the following: minimum lot requirements for the area, density, width, front yard, side yard, rear yard, height, unobstructed open space, or parking for the district in which they are located, even though the use of the premises conforms to the permitted uses within the district as set out in the provisions of this title."
7. The definition of nonstandard use is applicable in this case, not nonconforming use as the use is not in dispute but rather the noncompliance with applicable setbacks is. Nonstandard use relates to lots which contain buildings that no longer comply with the density requirements including setbacks due to changes in the Zoning Ordinance. To be considered nonstandard, it must be demonstrated that the use complied with the requirements of LMC prior to the effective date of the Zoning Ordinance, which is May 8, 1979, and that noncompliance is the result of changes to the Zoning Ordinance or Zoning Map.

8. Aerial photographs on file at Building and Safety from 1997 and 2002 appear to show the deck at the rear of the house. However, the deck is not visible in the 2005 aerial where it appears to have been removed.
9. The applicant notes that the proposed addition is being “built in the footprint of an existing structure, including a pergola, which had fallen into disrepair.” Other than those items allowed by LMC Section 27.71.110 which includes the redwood deck noted in #3 above, encroachment into the rear yard is not allowed. No building permit has ever been approved for any structure at the rear of the house other than the redwood deck.
10. There is no evidence of any structure other than a deck at the rear of the house to substantiate the claim of the applicant that the proposed addition is being built in the footprint of an existing structure.
11. The Board of Zoning Appeals is empowered to hear appeals both to grant variances “to the extent necessary to permit the owner a reasonable use of the land in those specified instances where there are peculiar, exceptional and unusual circumstances in connection with a specific parcel of land, which circumstances are not generally found within the locality or neighborhood concerned”, and to make exceptions “to permit the reconstruction of a nonconforming building which has been destroyed by fire, or partially destroyed by fire or act of God where the Board shall find some compelling public necessity requiring the continuance of the nonconforming use.”
12. If this appeal is denied, the property owner will be required to remove that portion of the building located within the required setback.

Prepared by

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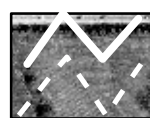
2005 aerial

## Board of Zoning Appeals #05014 2601 Antelope Cir.

### Zoning:

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

One Square Mile  
Sec. 32 T10N R7E



Zoning Jurisdiction Lines

City Limit Jurisdiction

